

1. **BellSouth's Performance Data Lacks Clarity.**

91. The need for clear definitions regarding what data will be included in each measurement is demonstrated by BellSouth's unilateral decision to include in its measurement of the timeliness of BellSouth's return of firm order confirmations to CLECs only those "orders that flow through mechanically and entirely without human intervention."¹⁶⁶ By unilaterally excluding all CLEC orders involving any manual processing whatsoever by BellSouth -- an exclusion that has no basis in the AT&T-BellSouth Agreement -- BellSouth has excluded all orders where the return of the FOC is likely to be delayed, and thus should have virtually guaranteed itself a high level of success in meeting the contractual FOC performance standard. I am also concerned that, although BellSouth has acknowledged this exclusion from its FOC measurement data, other similar exclusions may be hidden in the data BellSouth is reporting for other measurements. No data should be excluded from reported performance measurements unless the exclusion is clearly documented and supported by a factual showing of unique operational conditions.

92. BellSouth also fails to disclose any information about adjustments to the data it reports to the Commission. For example, in his testimony on "order flow-through," Mr. Stacy admits that in July, August and September, BellSouth's flow though percentage was in fact only 25, 34 and 39 percent respectively based on BellSouth's analysis of "eligible

¹⁶⁶ Stacy PM Aff., Ex. WNS-3, p. 2.

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LSRs" -- a term that he does not define.¹⁶⁷ Mr. Stacy then purports to compute "adjusted flow thru" numbers for each month based on some "BST analysis" of "SOER errors" for which he provides no information whatsoever.¹⁶⁸ The total absence of any information about BellSouth's so-called "SOER error analysis" -- an analysis which was never presented to the Louisiana Commission -- precludes any other party from providing any meaningful comment on BellSouth's adjusted flow through numbers. Compounding this lack of information, in testimony submitted in Georgia on October 22, 1997, Mr. Stacy testified that BellSouth's "SOER error analysis" showed that 45.5 percent of total SOER errors in September were attributable to CLECs, while in his affidavit in this case he claims, without any explanation, that 87 percent -- almost twice as many -- were attributable to CLECs, a change that increases his "adjusted flow thru" number from 67 percent to 89 percent.¹⁶⁹ Consistent with the Commission's repeated statements that a BOC must provide all of its factual evidence with its original application,¹⁷⁰ BellSouth should be precluded from relying on such undefined "adjustments" to its performance data.

¹⁶⁷ Stacy OSS Aff., Ex. WNS-41.

¹⁶⁸ Stacy OSS Aff., ¶ 112 & Ex. WNS-41.

¹⁶⁹ Compare Stacy Ex. WNS-13, p. 3, filed October 22, 1997, in *Performance Measurements for Telecommunications Interconnection, Unbundling and Resale*, Docket No. 7892-U (Ga. Pub. Serv. Comm'n) (Attachment 15), with Stacy OSS Aff., Ex. WNS-41.

¹⁷⁰ See, e.g., *Ameritech Michigan Order*, ¶¶ 49-50.

93. The manner in which BellSouth has obtained performance data through special studies or tests has also not been fully disclosed or explained. For example, Mr. Stacy presents the results of tests conducted by BellSouth in an attempt to measure response times for certain pre-ordering transactions at selected sites.¹⁷¹ However, Mr. Stacy provides no details as to how those tests were conducted or how BellSouth measured the access times reported for the various legacy systems or databases involved. Without considerable additional information about these tests, it is impossible for other parties to provide any meaningful analysis or comments, and impossible for the Commission to assess the validity of BellSouth's performance data on pre-ordering response times.

2. BellSouth's "Data Warehouse" Claims Are Premature.

94. The data collected by BellSouth also needs to be retained and structured so that interested parties can independently compute BellSouth's measurements and, where appropriate, compare those results to independently derived measures, such as data that may be captured independently by the CLECs. In addition, requirements need to be established for the retention of the raw data used to derive the monthly reported measures sufficient to enable

¹⁷¹ See Stacy OSS Aff., ¶ 110 & Ex. WNS-37.

an independent audit to be performed.¹⁷² Without the adoption of such audit safeguards, CLECs, the Commission and other regulatory agencies cannot validate BellSouth's data

95. In response to these concerns BellSouth touts its so-called "Data Warehouse,"¹⁷³ an idea first proposed in Mr. Stacy's performance measures affidavit for South Carolina. However, it is also apparent that this data warehouse is not presently capable of being used to validate or verify BellSouth's performance data. Although Mr. Stacy states that BellSouth "plans to provide" CLECs with access to this data warehouse in the future, he states that "BellSouth's target date for CLEC access to the Data Warehouse is no later than end of first quarter, 1998"¹⁷⁴ -- still five months away. While the creation of this data warehouse may

¹⁷² The AT&T-BellSouth Agreement states that "BellSouth shall . . . provide the raw data used to calculate each measurement for AT&T [under the Agreement] as reasonably requested by AT&T," and that Bell-South and AT&T shall jointly develop an audit plan with respect to BellSouth's installation intervals for its own customers. AT&T-BellSouth Agreement, Att. 12, Sec. 1.2 & 2.1 (Stacy PM Aff., Ex. WNS-2). However, that proposed audit plan is far too narrowly limited to only one of BellSouth's many proposed performance measurements, and BellSouth has not established procedures for the implementation of that audit right. Moreover, both the obligation to provide raw data and the limited audit right under the Agreement extend only to AT&T.

¹⁷³ See, e.g., BellSouth Br., p. 70; Stacy PM Aff., ¶¶ 13-15.

¹⁷⁴ Stacy PM Aff., ¶ 15.

ultimately be a step in the right direction, such future plans or promises have no relevance to BellSouth's present Section 271 application for Louisiana.¹⁷⁵

96. Moreover, Mr. Stacy provides virtually no information about what will be contained in this data warehouse or how CLECs or other interested parties will be permitted to use it. The unilateral nature of BellSouth's proposal to establish this data warehouse without consultation with either CLECs or regulators raises a concern that the data warehouse is simply a clever way for BellSouth to appear forthcoming while delivering only the data that BellSouth wants to supply. A more detailed, present commitment by BellSouth to permit the Commission, other regulators, and interested CLECs to audit BellSouth's performance measurements and underlying data should be required.

**V. BELLSOUTH'S PERFORMANCE MEASUREMENTS ARE NOT ADEQUATE
SIMPLY BECAUSE THEY ARE DERIVED FROM THE AT&T-BELLSOUTH
INTERCONNECTION AGREEMENT**

97. There is also no basis for BellSouth's contention that its performance measurements are sufficient because some of them are based on the service quality measurements contained in BellSouth's interconnection agreement with AT&T.¹⁷⁶ As the Commission made clear in its *Ameritech Michigan Order*, "evidence showing that a BOC is

¹⁷⁵ See *Ameritech Michigan Order*, ¶ 55 ("we find that a BOC's promises of *future* performance . . . have no probative value in demonstrating its *present* compliance with the requirements of section 271"), ¶ 152 (emphasis in original).

¹⁷⁶ See, e.g., BellSouth Brief, p. 70; Stacy PM Aff., ¶¶ 16, 17.

satisfying the performance standards contained in its interconnection agreements does *not* necessarily demonstrate compliance with the statutory [nondiscriminatory access] standard."¹⁷⁷ Rather, "equivalent access [is] the standard of performance required by section 271," and meeting that standard requires evidence that the BOC's performance for CLECs is equivalent to the BOC's performance of the same or analogous functions for itself.¹⁷⁸ Thus, the Commission made clear that contractual performance standards have no relevance to the parity of performance issue unless there is no analogous function that the BOC performs for itself or the contractual standard is shown to be set at a level that represents the BOC's actual performance for itself.¹⁷⁹

98. As the Commission thereby recognized, contractual performance standards serve a different purpose. Contractual performance standards or requirements are designed to aid in the enforcement of a private agreement between the parties. They are the product of negotiations between adverse parties, one of which has an incentive to impose rigorous standards, while the other has the opposite incentive of establishing standards that can be met with little or no difficulty. Where along that spectrum the final contractual

¹⁷⁷ *Ameritech Michigan Order*, ¶ 142 (emphasis added).

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*, ¶¶ 141-142. See also *Florida PSC Order*, p. 185 (specifically rejecting argument of BellSouth that the contractual performance standards in the AT&T-BellSouth Agreement are adequate to establish nondiscriminatory performance for CLECs under Section 271).

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performance standard ends up will depend on the relative strength and bargaining power of the respective parties. In this regard, it is important to keep in mind both (1) that BellSouth currently owns the local exchange facilities to which AT&T and other CLECs require access in order to compete, and (2) that the CLECs do not possess equivalent information regarding either BellSouth's capability to make its systems, services and facilities available to CLECs or the level of BellSouth's performance for its own local retail operations. As a result, at the time of the contract negotiations, the CLECs had relatively little information about what level of performance under the contract would represent parity with BellSouth's performance of the same or comparable functions for its own retail operations. On the question of contractual service quality standards, therefore, CLECs were at a significant disadvantage in the negotiation process due to the wide disparity in the parties' access to information regarding both BellSouth's capabilities and its level of performance for its own local retail operations.

99. Whatever the contractual service quality requirements that resulted from that negotiation process, however, those performance requirements establish only the minimum or *worst* level of performance that will avoid contractual remedies for poor performance. Meeting such minimum contractual requirements does not establish that BellSouth's performance for CLECs is at parity with BellSouth's performance for its own retail operations. For example, there is obviously no parity if BellSouth obligates itself to install residential service for AT&T's customers within a four day contractual requirement, but routinely installs

such service upon request for its own customers within 24 hours. Likewise, there is no parity if BellSouth returns firm order confirmations to CLECs within one business day, while confirming orders submitted by its own customer service agents while the customer is still on the line. No inference of nondiscrimination can be drawn simply from the fact that BellSouth is satisfying a minimum contractual service quality requirement.¹⁸⁰

100. The difference between parity of performance and the performance measurements established in Attachment 12 of the AT&T-BellSouth Agreement is also made clear in the contract itself. Section 12.1 of the Agreement specifically imposes on BellSouth a contractual obligation to provide a quality of performance for AT&T that is "at least equal to" BellSouth's performance for itself and its own customers, stating:

"In providing Services and Elements, ***BellSouth will provide AT&T with the quality of service BellSouth provides itself*** and its end-users. BellSouth's performance under this Agreement shall provide AT&T with the capability to meet standards or other measurements that are ***at least equal to*** the level that BellSouth provides or is required to provide by law or its own internal procedures."¹⁸¹

¹⁸⁰ On the other hand, a ***failure*** to meet a minimum contractual performance standard should presumptively establish a failure to deliver parity of performance in light of the fact that an incumbent LEC is unlikely to agree to a contractual performance requirement whose violation would subject it to monetary penalties unless it is confident that it will be able to achieve that level of performance based on its experience in providing the same or analogous performance for itself and its own customers.

¹⁸¹ Agreement between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc. for Louisiana, effective June 2, 1997, Section 12.1 (emphasis added).

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The Agreement then requires BellSouth to satisfy "all service standards, measurements and performance requirements set forth in the Agreement" -- including the parity requirement established in the two preceding sentences -- "*and* the measurements specified in Attachment 12" of the Agreement.¹⁸² Finally, any possible ambiguity as to the paramount importance of the parity requirement is laid to rest in the final sentence of this section which states that in the event BellSouth provides a higher level of performance for itself than the contractual service quality requirements established by the parties in Attachment 12, BellSouth's obligation is to provide AT&T the *higher* standard of performance -- that is, if BellSouth's actual level of service for its own retail operations is better than the performance standard set in Attachment 12, the contractual performance standard is superseded and BellSouth must provide parity with BellSouth's performance for itself:

"Any conflict between the standards, measurements, and performance requirements BellSouth provides itself and the standards, measurements and performance requirements set forth in Attachment 12 shall be resolved in favor of the higher standard, measurement and performance."¹⁸³

¹⁸² *Id.* ("BellSouth shall satisfy all service standards, measurements and performance requirements set forth in the Agreement *and* the measurements specified in Attachment 12 of this Agreement") (emphasis added).

¹⁸³ *Id.* The Agreement also gives AT&T the "right to request targets that exceed parity," provided that AT&T agrees "to reimburse BellSouth for the reasonable and demonstrable cost BellSouth incurs to provide such performance." *Id.*, Att. 12, Sec. 1.4. In that case, the target establishes the contractual performance obligation rather than BellSouth's performance for

(continued...)

The AT&T-BellSouth Agreement thus makes clear that the performance measurements established by the parties in Attachment 12 of the Agreement merely supplement -- and do not limit or definitively define -- BellSouth's paramount obligation to provide parity of performance for CLECs.

101. The distinction between parity of performance and the target performance levels established by the parties in Attachment 12 of the AT&T-BellSouth Agreement is also apparent from the provisions of Attachment 12, which states at the outset that "BellSouth, in providing Services and Elements to AT&T pursuant to this Agreement, shall provide AT&T the *same quality of service that BellSouth provides itself* and its end-users."¹⁸⁴ While the performance measurements and target performance levels contained in Attachment 12 may help to define and enforce BellSouth's performance obligations under the contract, therefore, Attachment 12 itself makes clear that they do not displace or supplant BellSouth's obligation to provide parity of performance to AT&T.

102. It is also important to note that the AT&T-BellSouth Agreement does not purport to establish a complete set of the performance measurements that are required to show

¹⁸³ (...continued)
itself.

¹⁸⁴ AT&T-BellSouth Agreement, Att. 12, Sec. 1.1 (emphasis added) (attached to Stacy PM Aff. as Ex. WNS-2).

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nondiscriminatory performance for CLECs. Thus, the Agreement itself states repeatedly that additional performance measurements and objectives will be required.¹⁸⁵

103. Further, a number of the performance measurements identified in the AT&T-BellSouth Agreement still have not been established by the parties. For example, with respect to the "desired due date" measure, the Agreement states that "BellSouth has stated that it cannot provide this measurement at this time."¹⁸⁶ Similarly, with respect to the "service orders provisioned as requested" measure, the Agreement states that "BellSouth and AT&T agree to review appropriate information and develop a proposal to provide this measurement no later than August 1, 1997,"¹⁸⁷ a deadline which was not met. Moreover, even Mr. Stacy has acknowledged that a number of the target installation intervals under the Agreement still have not been finalized.¹⁸⁸ As the Commission has made clear, such future plans or promises

¹⁸⁵ See, e.g., AT&T-BellSouth Agreement, Sec. 12.2 ("The Parties acknowledge that the need will arise for changes to the measurements specified in Attachment 12 during the terms of this Agreement" including "the addition" of new measurements); *id.*, Att. 12, Sec. 1.4 ("BellSouth and AT&T recognize that percentage target performance levels have not been provided for all measurements and that such targets for certain categories of performance will be required"); Att. 15, Sec. 9.4 ("Performance measurements [for pre-ordering, ordering and provisioning, maintenance and repair] shall be established pursuant to Section 12 of the General Terms and Conditions of this Agreement").

¹⁸⁶ AT&T-BellSouth Agreement, Att. 12, Sec. 2.1.

¹⁸⁷ *Id.*, Att. 12, Sec. 2.6.

¹⁸⁸ See Stacy Direct Testimony, filed June 6, 1997, in *In re Consideration of BellSouth*

(continued...)

to measure performance for CLECs obviously do not establish that BellSouth is providing parity of performance to CLECs at the present time.¹⁸⁹

VI. CONCLUSION

104. Notwithstanding the Commission's substantial efforts in prior decisions to provide guidance to BOCs about the performance data that they need to submit in order to meet their burden of establishing that nondiscriminatory performance is being provided to CLECs, the performance data submitted by BellSouth with its Section 271 application for Louisiana is obviously inadequate. As discussed above, BellSouth has failed to provide several categories of performance data that are essential to any determination of parity, and the performance data that BellSouth has submitted with its application does not show that parity of performance is presently available to CLECs. In addition, BellSouth has not presented its performance measurement information to the Commission in ways that would permit the Commission accurately to compare BellSouth's performance for CLECs with its performance for itself. BellSouth's application should therefore be denied.

¹⁸⁸ (...continued)

Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996, Georgia Pub. Serv. Comm'n Docket No. 6863-U, pp. 4-5; AT&T-Agreement, Att. 12, Sec. 1.4.

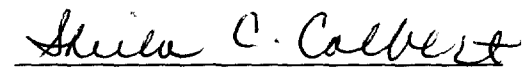
¹⁸⁹ See *Ameritech Michigan Order*, ¶ 55 ("we find that a BOC's promises of *future* performance . . . have no probative value in demonstrating its *present* compliance with the requirements of section 271"), ¶ 152 (emphasis in original).

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on November 19, 1997


C. Michael Pfau

SUBSCRIBED AND SWORN TO BEFORE ME THIS 19 DAY OF NOVEMBER, 1997.


Notary Public

My Commission Expires:
Notary Public Gwinnett County, Georgia
My Commission Expires March 14th, 1999

ATTACHMENT 1

LOCAL COMPETITION USERS GROUP PARITY OF PERFORMANCE MEASURES

Process	Key Measure	Measurement Description	Ameritech Michigan Order	Bell Atlantic/NYNEX Merger Order
Pre-Ordering	Timeliness of providing pre-ordering information	Measures the average ILEC response time to queries such as appointment scheduling, service & feature availability, address verification, request for phone numbers and customer service records. The measurement interval starts when the CLEC request is issued and ends when the ILEC response message is received by the CLEC.	Provided by Ameritech	Required (Measure 1)
Ordering and Provisioning	Order completion intervals	Measures the average ILEC order completion interval, beginning with the delivery of a valid order to the ILEC and ending when the CLEC receives confirmation of all work being completed by the ILEC. ¹	Required (§§ 164-171, 185, 212)	Required (Measure 9)
	Order accuracy	Measures the accuracy and completeness of the ILEC order related activities by comparing what the CLEC ordered to what the ILEC confirmed as completed.	Required both "service order accuracy" and "provisioning accuracy" (§ 212)	Required percentage of order rejections due to BOC error (Measure 5)

¹ Data should be disaggregated for the following types of service or facility: residence POTS, business POTS, ISDN, Centrex/Centrex-like, PBX trunks, Channelized T1.5 Service, Other Resold Services, UNE Platform (at least DSO loop + local switch + transport elements), UNE Channelized DS1 (DS1 loop + multiplexing), Unbundled DS0 loop, Unbundled DS1 loop, Other Unbundled loops, Unbundled Switch, Other UNEs.

**LOCAL COMPETITION USERS GROUP
PARITY OF PERFORMANCE MEASURES**

Process	Key Measure	Measurement Description	Ameritech Michigan Order	Bell Atlantic/NYNEX Merger Order
Ordering and Provisioning (continued)	Order status	Measures the average response time for the ILEC supplying key customer impacting status information (firm order confirmations, rejects, jeopardies, and completions) from the time an order is sent to the ILEC (FOCs & rejects) or work is completed (completion notices) until a status notice is received by the CLEC.	Data on timeliness of FOCs, rejections, and completion notices provided and relied on in rejecting application (§§ 186-188)	Required average order confirmation time, average time for order rejection, and average time for order completion notification (Measures 3, 4 & 6)
	Held orders	Monitors the average length of time that orders missing the committed due date and not completed at the close of the reporting period have been held past the committed due date.	Required (§ 212)	
Maintenance and Repair	Mean time to restore	Measures the average time that it takes for the ILEC to resolve customer troubles within the measurement period. ¹ The interval begins when the CLEC transmits a valid trouble ticket to the ILEC and ends when the CLEC receives a valid closure of the ticket from the ILEC.	Provided by Ameritech (see n.534)	Required (Measure 16)
	Frequency of repeat troubles	Measures the frequency of recurring customer trouble on the same line, circuit, or service. ¹	Provided for POTS resale; required for UNEs (§ 212)	Required (Measure 18)

¹ Data should be disaggregated for the following types of service or facility: residence POTS, business POTS, ISDN, Centrex/Centrex-like, PBX trunks, Channelized T1.5 Service, Other Resold Services, UNE Platform (at least DSO loop + local switch + transport elements), UNE Channelized DS1 (DS1 loop + multiplexing), Unbundled DSO loop, Unbundled DS1 loop, Other Unbundled loops, Unbundled Switch, Other UNEs.

LOCAL COMPETITION USERS GROUP PARITY OF PERFORMANCE MEASURES

Process	Key Measure	Measurement Description	Ameritech Michigan Order	Bell Atlantic/NYNEX Merger Order
Maintenance and Repair (continued)	Frequency of troubles (troubles per 100 lines)	Measures the general performance quality of the ILEC's network delivered to the CLEC by comparing the number of trouble reports the CLEC logs with the ILEC to the total average number of CLEC lines in service during the measurement period. ¹	Provided by Ameritech (see nn. 410, 534)	Required (Measure 14)
	Estimated time to restore met	Measures the reliability of ILEC restoral commitment by monitoring the proportion of troubles resolved (measured separately for by whether or not a premises visit is required) within the ILEC estimated restoral interval. ¹		Required percentage of missed repair appointments (Measure 15)
General	Systems availability	Measures the availability of operations support systems and associated interfaces by comparing (separately for each pre-ordering, ordering and provisioning, maintenance interface) the number of hours the required functionality was available for use by the CLEC to the total number of hours that the functionality was scheduled to be available to the CLEC.	Provided by Ameritech	Required (Measure 2)

¹ Data should be disaggregated for the following types of service or facility: residence POTS, business POTS, ISDN, Centrex/Centrex-like, PBX trunks, Channelized T1.5 Service, Other Resold Services, UNE Platform (at least DSO loop + local switch + transport elements), UNE Channelized DS1 (DS1 loop + multiplexing), Unbundled DSO loop, Unbundled DS1 loop, Other Unbundled loops, Unbundled Switch, Other UNEs.

LOCAL COMPETITION USERS GROUP PARITY OF PERFORMANCE MEASURES

Process	Key Measure	Measurement Description	Ameritech Michigan Order	Bell Atlantic/NYNEX Merger Order
General (continued)	Center responsiveness	Measures the responsiveness of support centers that ILECs provide to the CLECs by measuring the average time for the CLEC (caller) to be connected with an ILEC agent capable of responding to the call and call abandonment rate.	Ameritech provided calls answered within interval (see n. 410)	
Billing	Timeliness of delivery	Measures the mean time for the delivery of billing records (measured separately for usage records and wholesale invoices) to the CLEC within the agreed upon interval during the reporting period.	Required (§§ 140, 221)	Required (Measures 21 & 22)
	Accuracy	Measures the proportion of billing records (separately for usage records and wholesale invoices) delivered to CLEC during the reporting interval that are provided both in the agreed-upon format and containing the agreed-upon content.	Required (§§ 212, 221)	
Unbundled Network Elements and Combinations	Availability ²	Measures the availability to the CLEC of individual network elements or element combinations that do not have an apparent retail analogue.	Required (§§ 159-161, 212)	Required (e.g., Measures 7-9, 16)

² Measures for Unbundled Network Elements need to be defined uniquely for each requested element. Where element combinations are employed, comparative data should be provided for reasonably analogous retail services or other activities of the ILEC.

LOCAL COMPETITION USERS GROUP PARITY OF PERFORMANCE MEASURES

Process	Key Measure	Measurement Description	Ameritech Michigan Order	Bell Atlantic/NYNEX Merger Order
Unbundled Network Elements and Combinations (continued)	Performance ²	Measures the frequency with which individual network elements or element combinations that do not have an apparent retail analogue operate according to expected parameters.	Required (§§ 159-161, 212)	Required (e.g., Measures 11-14, 17-18)
Operator Services and Directory Assistance	Speed of answer	Measures the mean time to answer operator services and directory assistance calls by an ILEC OS or DA operator. Includes all time from initiation of ringing until the customer's call is answered.	Provided by Ameritech (see n.410)	
Network Performance	Network performance parity	Compares ILEC performance distribution for its own customers to ILEC performance distribution for CLEC customers. Measures the deviation from supplier service performance distribution for each metric specified.	Trunk blockage data provided by Ameritech (§§ 224-245, 255) Call completion data also required (§§ 235, 255)	Required trunk blocking data (Measures 19 & 20)

² Measures for Unbundled Network Elements need to be defined uniquely for each requested element. Where element combinations are employed, comparative data should be provided for reasonably analogous retail services or other activities of the ILEC.

ATTACHMENT 2

OCT 15 1997

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking
on the Commission's Own Motion
into Monitoring Performance of
Operations Support Systems.

FILED
PUBLIC UTILITIES COMMISSION
OCTOBER 9, 1997
SAN FRANCISCO OFFICE
R.97-10-016

Order Instituting Investigation
on the Commission's Own Motion
into Monitoring Performance of
Operations Support Systems.

FILED
PUBLIC UTILITIES COMMISSION
OCTOBER 9, 1997
SAN FRANCISCO OFFICE **RECEIVE**
1.97-10-017 AT&T Corp. Legal - SF

OCT 16 1997

OPINION

I. Summary

We institute this formal rulemaking proceeding and investigation¹ as a procedural vehicle to accomplish three goals: 1) to determine reasonable standards of performance for Pacific Bell (Pacific) and GTE California Incorporated (GTEC) in their Operations Support Systems (OSS), 2) to develop a mechanism that will allow the Commission to monitor improvements in the performance of OSS, and 3) to assess the best and fastest method of ensuring compliance if standards are not met or improvement is not shown. A subset of the third goal will be to provide appropriate compliance incentives under Section 271 of the Telecommunications Act of 1996 (TA96) which applies solely to Pacific² for the prompt achievement of OSS improvements.

CVANT	_____	FOUNDER	_____
MESS	_____	REG. CLERK	✓
INTERCE	_____	PAK	_____
Other	_____	CLERK	POS

¹ While we are opening this proceeding as a rulemaking and investigation, we believe that it is most likely that there will not be a need for hearings. If that proves to be the case, we will close the investigatory docket.

² Section 271 of the TA96 applies specifically to Pacific which is listed as one of the Bell Operating Companies (BOC).

Within the context of our obligation to verify Bell Operating Company (BOC)³ Section 271 compliance, this proceeding will also provide us with performance measures which will facilitate an informed evaluation of Pacific's OSS system. In a future set of comments, parties will have the opportunity to address the need for performance measures and standards for Citizens and Roseville telephone companies.

We are concerned about the development of competition in the local exchange market in California. Our concerns encompass all forms of competition: Total service resale, use of unbundled elements, and pure facilities-based service. To some extent, those competing market entry strategies have unique concerns regarding the OSS systems deployed by Pacific and GTEC. It is our goal in this proceeding to address concerns raised by all types of local service providers.

In consolidated complaint proceedings, Case (C.) 96-12-026, C. 96-12-044, and C.97-02-021, the final decision (D.97-09-113)⁴ noted the Commission's concern about the slow growth of competition in the local exchange market. In the consolidated complaint cases as well as in other significant California telecommunications proceedings (such as OANAD⁵), the Commission identified OSS deployment as one of several factors critical to the growth of competition in the local exchange market. Therefore, we intend to expedite this proceeding so that we can effectively monitor and oversee OSS processes. As a first step, we intend to adopt an interim list of performance measures as quickly as possible so that we can begin to assess key aspects of OSS performance. The draft form of this list is attached as Appendix B.

³ In order to gain authorization to provide, within its defined local exchange service area, telecommunications between a point located in a local access and transport area (LATA) and a point located outside such area (in-region interLATA services), a BOC must show compliance with certain provisions of Section 271. The state public utilities commission within the affected state shall verify that the BOC has entered into one or more binding interconnection agreements and has complied with a 14-point checklist.

⁴ The final decision was mailed on September 25, 1997.

⁵ Open Access and Network Architecture Development proceeding, Rulemaking 95-04-043/ Investigation 95-04-044.

II. Introduction

In the November 1993 report entitled Enhancing California's Competitive Strength: A Strategy for Telecommunications Infrastructure, the Commission stated its intention to open all telecommunications markets to competition by January 1, 1997. The California Legislature subsequently adopted Assembly Bill 3606 (Ch. 1260, Stats. 1994), expressing similar legislative intent to open telecommunications markets to competition by January 1, 1997. Following the issuance of our 1993 report, the Commission took several steps to secure this mutual goal.

In mid-1995, we adopted rules in Rulemaking (R.) 95-04-043/Investigation (I.) 95-04-044 (the Local Competition proceeding) that apply to prospective competitive local carriers (CLCs) when they are requesting certificates of public convenience and necessity (CPCNs) to provide local exchange service. In the same decision,^{*} we also adopted consumer protection rules for CLCs to incorporate into their tariffs, and set the timetable for the CLCs' entrance into the local exchange market. In December 1995, we opened the market for facilities-based competitors (effective January 1, 1996), certified an initial group of 31 facilities-based providers, and established procedures for negotiating interconnection arrangements with incumbent Local Exchange Carriers (ILECs).

By March 1996, 60 resellers had been certified and resale discount rates for Pacific and GTEC were adopted. In the interim, we have continued to refine our rules and to certify new market entrants.

III. The Need for OSS Performance Standards in Order to Monitor the Progress of the Competitive Market

In February 1996, this Commission adopted rules governing relations between the ILECs and new telecommunications market entrants, including a rule relating specifically to implementation of OSS:

^{*} D.95-07-054, 60 CPUC2d 611 (1995).

"LECs shall put into place an automated on-line service ordering and implementation scheduling system for use by CLCs. Data pertaining to service and facility availability shall be made available to CLCs."

Unfortunately, this rule provided no due date for developing an automated on-line ordering and implementation system. Moreover, it contains no monitoring requirement to ensure that the systems actually implemented by the ILECs meet CLCs' needs. As a result, at present the Commission has no way of measuring whether Pacific and GTEC are achieving parity with their retail operations.

The Federal Communications Commission (FCC) emphasized the importance of OSS functions when it included OSS in its list of elements required to be unbundled and made available to competitors: "The [FCC] concludes that incumbent LECs must provide nondiscriminatory access to operations support systems functions by January 1, 1997. The Commission concludes that access to such operations support systems is critical to affording new entrants a meaningful opportunity to compete with incumbent LECs."

In its Final Rules appended to the First Interconnection Order, the FCC points to the need for parity between the OSS systems used by the LEC (as part of its retail operations) and those put in place for competitive carriers. Section 51.311(b) states:

"... to the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself."

⁷ D. 96-02-072, Appendix E, Page 14.

⁸ Federal Communications Commission, "Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers," First Report and Order, adopted August 1, 1996, ¶127 (FCC 96-98).

In summary, OSS is included on the FCC's list of network elements to be unbundled, and parity between retail and competitive OSS functions is required where technically feasible.

On December 11, 1996, MCI Telecommunications Corporation (MCI) filed a complaint with this Commission alleging that its entry into the local market was being constrained by Pacific's failure to migrate customers to MCI on a timely basis and without service interruption.⁷ AT&T Communications of California, Inc. (AT&T) filed a similar complaint on December 23, 1996, alleging that problems with Pacific's internal record-keeping system resulted in a substantial number of customers whose service was disconnected when they attempted to switch their service to AT&T. AT&T went on to complain about the limited resources Pacific had devoted to the handling of resale orders, which restricted the number of migration orders which could be processed in a day.¹⁰ Sprint Telecommunications Venture and Sprint Communications Company L.P. (collectively, Sprint) filed a complaint, with charges similar to AT&T's, in February 1997. The Commission addressed the three complaints on a consolidated basis.

The Commission decided the complaint cases in D.97-09-113. Despite the outcome of the consolidated complaint cases, the Commission still needs to take a more active role in the implementation of OSS to ensure that efforts to open markets to competition are not thwarted by inadequate OSS functions. At present, we do not have the necessary information before us to enable the Commission to take a full and active role in ensuring that OSS deployment facilitates, rather than inhibits, the growth of competition in the local market. To remedy that situation, the decision in the consolidated complaint cases directed the Telecommunications Division to prepare this investigation for the Commission's consideration (D.97-09-113, pp. 25-26).

⁷ C.96-12-026 filed by MCI on December 11, 1996.

¹⁰ C.96-12-044 filed by AT&T on December 23, 1996.